

David E. Bower
MONTEVERDE & ASSOCIATES PC
600 Corporate Pointe, Suite 1170
Culver City, CA 90230
Tel: (213) 446-6652
Fax: (212) 601-2610

Counsel for Plaintiff

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

MEL GROSS, Individually and on Behalf of
All Others Similarly Situated,

Plaintiff,

v.

BROCADE COMMUNICATIONS
SYSTEMS, INC., LLOYD A. CARNEY,
JUDY BRUNER, RENATO A.
DIPENTIMA, ALAN L. EARHART, JOHN
W. GERDELMAN, KIM C. GOODMAN,
DAVID L. HOUSE, L. WILLIAM
KRAUSE, DAVID E. ROBERSON, and
SANJAY VASWANI,

Defendants.

Civil Action No. 5:16-cv-07173-EMC

**STIPULATION AND ~~PROPOSED~~ ORDER CONCERNING PLAINTIFF'S
VOLUNTARY DISMISSAL OF THE ABOVE ACTION WITHOUT PREJUDICE AND
PLAINTIFF'S COUNSEL'S ANTICIPATED APPLICATION FOR AN AWARD OF
ATTORNEYS' FEES AND EXPENSES**

WHEREAS, on November 2, 2016, Brocade Communications Systems, Inc. ("Brocade" or the "Company") announced that it had entered into a definitive merger agreement (the "Merger Agreement"), pursuant to which a wholly owned subsidiary of Broadcom will merge with and into Brocade (the "Proposed Transaction");

1 WHEREAS, on December 6, 2016, Brocade filed a preliminary proxy statement (the
2 "Preliminary Proxy") with the Securities and Exchange Commission ("SEC") in support of the
3 Proposed Transaction;

4 WHEREAS, on December 14, 2016, Plaintiff Melvin Gross ("Plaintiff"), a shareholder of
5 Brocade, filed a Class Action Complaint in the above captioned action (the "Action") alleging
6 Defendants violated Sections 14(a) and 20(a) of the Securities Exchange Act of 1934 and Rule
7 14a-9 promulgated thereunder (the "Exchange Act") by causing the allegedly materially
8 incomplete and misleading Proxy to be filed;
9

10 WHEREAS, on December 20, 2016, Brocade filed a definitive proxy statement (the
11 "Definitive Proxy") with the SEC setting a shareholder meeting on January 26, 2017;

12 WHEREAS, on December 23, 2016, Plaintiff sent a formal demand letter to Defendants
13 stating that the Definitive Proxy had failed to address his alleged disclosure violations and
14 providing legal authority in support of the alleged disclosure violations in his Class Action
15 Complaint;
16

17 WHEREAS, on January 18, 2017, Brocade filed an amended proxy containing
18 supplemental disclosures addressing certain disclosure allegations in the Action (the
19 "Supplemental Disclosures");

20 WHEREAS, Plaintiff contends that the prosecution of the Action was a cause of the
21 decision to make the Supplemental Disclosures, and Defendants dispute that contention;
22

23 WHEREAS, the Supplemental Disclosures moot the disclosure claims asserted in the
24 Action;

25 NOW THEREFORE, pursuant to the stipulations of the parties, **IT IS HEREBY**
26 **ORDERED AND ADJUDGED THAT:**
27
28

1. Plaintiff hereby agrees to voluntarily dismiss the Action, without prejudice to Plaintiff;
3. Plaintiff contends that the Supplemental Disclosures were issued by Defendants in response to this Action and the efforts of Plaintiff's counsel to prosecute disclosure claims, and Plaintiff therefore asserts that his counsel is entitled to a fee and expense award;
4. Defendants dispute Plaintiff's contention and deny that Plaintiff's counsel are entitled to a fee and expense award; and
5. This Court retains continuing jurisdiction over the parties in the Action solely for purposes of further proceedings related to the adjudication of Plaintiff's anticipated application for an award of attorneys' fees and expenses.

DATED: February 6, 2017

Respectfully submitted,

By: /s/ David E. Bower

David E. Bower SBN 119546

MONTEVERDE & ASSOCIATES PC

600 Corporate Pointe, Suite 1170

Culver City, CA 90230

Tel: (310) 446-6652

Fax: (212) 601-2610

Email: dbower@monteverdelaw.com

OF COUNSEL

MONTEVERDE & ASSOCIATES PC

Juan E. Monteverde

The Empire State Building

350 Fifth Avenue, 59th Floor

New York, NY 10118

Tel: (212) 971-1341

E-mail: jmonteverde@monteverdelaw.com

Counsel for Plaintiff

GAINEY McKENNA & EGLESTON

Thomas J. McKenna
Gregory M. Egleston
440 Park Avenue South, 5th Floor
New York, NY 10016
Telephone: (212) 983-1300
Facsimile: (212) 983-0383
Email: tjmckenna@gme-law.com
Email: gegleston@gme-law.com

Counsel for Plaintiff

WILSON SONSINI GOODRICH &
ROSATI
Professional Corporation

By: /s/ Boris Feldman
Boris Feldman
650 Page Mill Road
Palo Alto, CA 94304
Telephone: (650) 493-9300
Facsimile: (650) 493-6811
boris.feldman@wsgr.com

Attorneys for Defendants Brocade
Communications Systems, Inc., Lloyd A.
Carney, Judy Bruner, Renato A. DiPentima,
Alan L. Earhart, John W. Gerdelman, Kim
C. Goodman, David L. House, L. William
Krause, David E. Roberson, and Sanjay
Vaswani

IT IS SO ORDERED.

Because this case has been related to an earlier-filed case (C-16-7081 EMC) as well as several other cases, the Court expects Plaintiff in the instant case to meet and confer with plaintiffs' counsel in the other cases as to the appropriate timing of any fee motion.

United States District Court Judge

